

Remarks

Status of the Claims

Claims 1-19, and 36-43 are pending in the application. All claims stand rejected. By this paper, claim 18 has been amended, and new claim 44 has been added. Reconsideration of all pending claims in view of the amendments, declarations, and following arguments is respectfully requested.

Claim Rejections

Claims 18, 37, and 39 were rejected under 35 U.S.C. 102(e) as being anticipated by Lash et al. ("Lash"). Claim 40 was rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds et al. ("Reynolds"). Claims 1-6, 8-14, and 19 was rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds in view of Pearson et al. ("Pearson"). Claims 7 and 15-17 was rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds in view of Pearson and further in view of Blacketter et al. ("Blacketter"). Claims 36 and 41 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lash in view of Pearson. Claim 38 was rejected under 35 U.S.C. 103(a) as being unpatentable over Lash in view of Alao et al. ("Alao"). Claims 42 and 43 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lash in view of Pearson. These rejection are respectfully traversed as described below.

Rule 131 Declarations

With the exception of claim 18, all independent claims are being rejected at least partially in view of Pearson. By this paper, claim 18 has been amended to include limitations similar to those of the other independent claims that were rejected under Pearson.

Enclosed herewith are Declarations under 37 CFR 1.131 to remove Pearson as a reference. As detailed in the Declaration of Mai-Lan Tomsen, Armando P. Stettner, and Martin L. Behrens, the inventors conceived of a method for modifying enhanced programming for an interactive television system, including the interception of a trigger at a cable operator facility and replacing that trigger with second trigger according to pre-selected customer preferences, prior to April 26, 2001. A complete draft of the application that included the aforementioned method was provided to the inventors on April 16, 2001. Thus, the invention was conceived at least ten days before the filing date of the Pearson reference.

As detailed in the Declaration of Kory D. Christensen, the inventors, Digeo's in-house counsel, and the undersigned attorney diligently worked between the critical period of just before April 26, 2001 to May 15, 2006 (the date of constructive reduction to practice) to file the above-identified application. A timeline for the constructive reduction of the invention to practice is provided below.

On April 16, 2001, the undersigned completed a draft of the above-identified application and emailed it to James K. Okamoto, in-house patent counsel for Digeo, Inc. On the same day, Mr. Okamoto diligently sent the draft application to the three inventors. Within one week of receiving the draft application, Mr. Okamoto diligently

provided the undersigned with his comments on April 23, 2001. The following week, Mr. Okamoto and Digeo's Chief Technology Officer, Robert Novak, exchanged emails regarding setting up a meeting to discuss changes to the above-identified application. Mr. Okamoto indicated that he was scheduled to be traveling, but would be willing to change his travel schedule to make the meeting and diligently complete the filing of the above-identified application. The meeting was scheduled on May 9, 2001, to accommodate the schedules of the undersigned and Mr. Novak. The undersigned completed the changes discussed in the May 9, 2001 meeting, and the above-identified application was filed less than one week later on May 15, 2001.

The undersigned respectfully notes that one of the inventors, Armando P. Stettner, was reviewing at least one other application at the same time, *i.e.*, U.S. Patent Application Serial No. 09/859,889, filed May 17, 2001, along with performing his many other duties at Digeo. Furthermore, another inventor, Mai-Lan Tomsen, was in the process of leaving Digeo and was on vacation for at least a portion of the time period between April 26, 2001 and May 15, 2001.

The undersigned respectfully submits that the applicants, the assignee, and the undersigned were, under the circumstances described above, diligently engaged in constructively reducing the invention to practice between April 26, 2001 and May 15, 2001. Any delay was attributable, *inter alia*, to obtaining and evaluating feedback from five different reviewers, scheduling a meeting between at least three parties (one of whom was traveling) to discuss changes to the application, the fact that one inventor was reviewing another application in parallel with the above-

identified application, and the fact that another inventor was on vacation for at least a portion of the critical period.

Submission of Rule 131 Declaration by Mai-lan Tomsen Under 37 CFR 1.47(a)

The undersigned sent copies of the Declaration under 37 CFR 1.131 via Federal Express to Mai-lan Tomsen, Armando P. Stettner, and Martin L. Behrens, at their last known addresses, on January 10, 2007. One of the inventors, Mai-lan Tomsen, returned a signed copy of the Declaration under 37 CFR 1.131, which is enclosed herewith. The other two Declarations were returned by Federal Express with an indication that the addressees had moved. Copies of the Federal Express shipping labels and return letters from Federal Express detailing the above facts are enclosed in the attached Appendix. Also enclosed are printouts from an Advanced People Search via Accurint®, a service of Lexis Nexis®, showing the currently-available addresses of the inventors.

Digeo, Inc., as the assignee, and Mai-Lan Tomsen, respectfully petition under 37 CFR 1.47(a) to submit the attached Declaration under 37 CFR 1.131 on behalf of Armando P. Stettner and Martin L. Behrens, who cannot be found or reached after diligent effort. The last known addresses of the missing inventors are:

Martin L. Behrens
13431 NE 47th St.
Bellevue, WA 98005-1111

Armando P. Stettner
19238 184th PL NE 72
Woodinville, WA 98072-8260

Conclusion

Having demonstrated conception prior to the filing date of the Pearson reference and diligence from just before the date of the reference to the date of constructive reduction to practice, Applicant respectfully submits that Pearson should be removed as a reference. Given that all of the independent claims other than claim 18 were rejected under Pearson, and that claim 18 would be rejected under Pearson due to the claim amendments, Applicant respectfully submits that all claims are in condition for allowance. A Notice of Allowance is respectfully requested.

Respectfully submitted,

Digeo, Inc.

By


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